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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0421**

State of Minnesota,  
Respondent,

vs.

Antoine Kenneth James Adkins,  
Appellant.

**Filed March 3, 2014  
Affirmed  
Hooten, Judge**

Hennepin County District Court  
File No. 27-CR-12-19475

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

**UNPUBLISHED OPINION**

**HOOTEN**, Judge

Appellant argues that his conviction of being an ineligible person in possession of a firearm must be reversed because the circumstantial evidence is insufficient to prove

that he possessed a firearm. We affirm.

## **FACTS**

On June 19, 2012, at approximately 8:10 p.m., the Minneapolis Police Department received a call that a shot was fired near the convention center in downtown Minneapolis. According to the caller, a group of five or six black males were on the scene. A group matching this description was initially located at 1st Avenue and 15th Street and then moved to 1st Avenue and 16th Street. Officer Lance Faust, Officer Aaron Hanson, and Sergeant Johnny Mercil separately responded to the call and met the group in front of an apartment building. At trial, Officer Faust and Sergeant Mercil testified that they saw five men in the group, while Officer Hanson testified that there were four to five men.

Officers Faust and Hanson exited their squad cars, and Officer Faust, fearing the possibility that one of the men was armed, ordered the group to get on the ground. Four of the men complied, but one, subsequently identified as appellant Antoine Adkins, ran away. Officer Faust stayed with the four men while Officer Hanson chased Adkins on foot and Sergeant Mercil pursued Adkins in his car. Officer Faust identified and patted down the four men, finding no firearms or ammunition.

Adkins ran northeast through a parking lot and toward the west side of the convention center. In this area, one stretch of the sidewalk running north and south was temporarily enclosed with a six- to seven-foot-tall metal fence for construction. There were mud puddles along the east side of the sidewalk that was being constructed. Next to the sidewalk and puddles, an embankment of dirt ran along the length of the sidewalk.

Upon reaching this construction site, Adkins kicked down the fence and ran over it. He continued running north on top of the embankment until he slid down the embankment eight to ten feet toward the sidewalk being constructed. According to Officer Hanson, Adkins “fell down to his knees” and “placed his hands on the ground.” Officer Hanson testified that, while chasing Adkins, there were times when he could not see Adkins’s hands or the front of his body and that he never saw Adkins carrying a firearm or throwing anything away. Sergeant Mercil testified that, as he drove parallel to Adkins, he observed Adkins twice reaching into his front pocket with his right hand but did not see Adkins taking anything out. Sergeant Mercil lost sight of Adkins after Adkins slid down the embankment.

Officer Hanson did not follow Adkins down the embankment and instead continued running parallel to Adkins until the embankment leveled off. After getting up, Adkins continued running northbound for another 10 to 15 feet toward the end of the embankment. At this point, Sergeant Mercil intercepted and apprehended Adkins. No firearm was found on Adkins. Officer Hanson escorted Adkins to his squad car by retracing his steps through the construction site. On the way back, Officer Hanson looked for evidence but did not find any.

Upon learning that no firearm was found on any of the men, Sergeant Mercil retraced Adkins’s route. He returned to the construction area and saw “some darkened or loose dirt where it looked like [Adkins] had slid down” the embankment. At the bottom of the embankment and “one to two feet away” from the end of Adkins’s sliding trail, Sergeant Mercil found a handgun lying in a puddle with a half-inch of the gun handle

sticking out of the mud and water. After recovering the gun, Sergeant Mercil returned to where the shot was reported and recovered a spent cartridge casing in a gutter.

Adkins was charged with being an ineligible person possessing a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2010). He stipulated that he was ineligible to possess a firearm. Sergeant Mercil testified that the gun's registered owner was never identified, that no testing for gunpowder residue was performed on Adkins's hands, and that he did not know how long the gun had been in the mud puddle. Officer Hanson acknowledged that he did not know when the spent casing was discharged. Neither fingerprint evidence sufficient for comparison nor DNA evidence was found on the gun, the magazine from the gun, the spent casing, and the remaining live cartridges. However, ballistics testing showed that the discharged casing was consistent with it being fired from the gun recovered at the construction site.

A jury found Adkins guilty. The district court sentenced him to 60 months in prison. This appeal follows.

## **DECISION**

The charge of being a prohibited person in possession of a firearm requires proof of ineligibility to possess a firearm, to which Adkins stipulated, and of firearm possession. Minn. Stat. § 624.713, subd. 1 (2010). The state must establish either actual or constructive possession of a firearm. *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001). We apply a two-step analysis when reviewing sufficiency-of-the-evidence challenges based on circumstantial evidence:

The first step is to identify the circumstances proved. In identifying the circumstances proved, we defer to the jury's acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State. As with direct evidence, we construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the State's witnesses and disbelieved the defense witnesses. Stated differently, in determining the circumstances proved, we consider only those circumstances that are consistent with the verdict. This is because the jury is in the best position to evaluate the credibility of the evidence even in cases based on circumstantial evidence.

The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt. We review the circumstantial evidence not as isolated facts, but as a whole. We examine independently the reasonableness of all inferences that might be drawn from the circumstances proved; [including the] inferences consistent with a hypothesis other than guilt. Under this second step, we must determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt, not simply whether the inferences that point to guilt are reasonable. We give no deference to the fact finder's choice between reasonable inferences.

*State v. Silvernail*, 831 N.W.2d 594, 598–99 (Minn. 2013) (alteration in original) (quotations and citations omitted).

Adkins does not challenge the circumstances proved, and he concedes that one reasonable inference from the circumstances proved is that he possessed the gun found in the mud puddle. But he argues that a reasonable inference inconsistent with guilt can also be drawn from the circumstances proved. We disagree.

We first note that both parties incorrectly characterize this case as one of constructive possession. Constructive possession exists “where the inference is strong that the defendant at one time physically possessed the [item] and did not abandon his possessory interest in the [item] but rather continued to exercise dominion and control over it up to the time of the [arrest].” *State v. Florine*, 303 Minn. 103, 104–05, 226 N.W.2d 609, 610 (1975). Actual possession, on the other hand, “require[s] proof that appellant physically had the handgun on his person.” *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001). The state’s theory of the case is that Adkins dropped the gun in the mud puddle while running away from the police, meaning that Adkins either abandoned the gun or dropped it and no longer exercised dominion and control over it. Accordingly, this is a case of actual possession—that Adkins was carrying the gun prior to dropping it in the mud puddle—which may be proved by circumstantial evidence.

Turning to the merits, Adkins offers only one supposedly reasonable inference inconsistent with guilt. He suggests “that the gun was dropped by the [sixth] man who had been part of the group reported to [the] police and that this man discarded the gun in the construction site prior to [his] chase and before the police fully arrived on the scene.” But the only part of the record that supports the existence of a sixth man is the initial police dispatch identifying a group of five *or* six men near the location of a shot fired. Officer Faust, Officer Hanson, and Sergeant Mercil all testified that they saw, at most, five men at the scene. And only one—Adkins—ran away. Moreover, in examining the record for reasonable inferences, we will not overturn a conviction “on the basis of mere

conjecture.” *State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010) (quotation omitted). Adkins asks us to accept the mere conjecture that he, by coincidence, fled in the same direction as the alleged sixth man, entered the same construction site as the alleged sixth man, and slid down the embankment into the same mud puddle where the alleged sixth man had supposedly placed the gun. This inference is unreasonable given the lack of evidence that anyone else fled or entered the fenced-in construction site that night and the close proximity of the gun to Adkins’s slide mark.

Adkins also argues that no fingerprint or DNA evidence links him to the gun and that no witnesses saw him with the gun. But the state “does not have the burden of removing all doubt,” only “all reasonable doubt.” *Id.* And “[c]ircumstantial evidence is entitled to the same weight as direct evidence if the circumstances proved are inconsistent with any rational hypothesis except that of the accused’s guilt.” *Smith*, 619 N.W.2d at 769–70. Accordingly, the state was not required to submit circumstantial biometric evidence or direct witness evidence. The circumstances proved point to only one reasonable inference—that Adkins possessed the gun.

**Affirmed.**